MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3558 OF 2007

IN

SUIT NO. 3427 OF 1991

CENTRAL BANK OF INDIA .. PLAINTIFF

Vs.

IRSHAD SHARIFF & ORS. .. DEFENDANTS

Mr. J. B. Mitra i/b T. N. Tripathi & Co. for plaintiff

Mr. Preetesh R. Kusal i/b M. Janardhanan for defendant 1

CORAM: **SMT. RANJANA DESAI, J.**

DATED: SEPTEMBER 28, 2007.

P.C.

. The plaintiff bank has taken out this notice of motion praying that leave be granted to the plaintiffs to adduce secondary evidence of the documents as per the list annexed to the motion as Exhibit-A, by producing certified true copies of original thereof. It is prayed that the same may be taken as secondary evidence under Section 65 of the Indian Evidence Act.

2. In affidavit-in-support of the motion the plaintiff has averred as under:

> "7. I further say that the plaintiff is relying upon various loan documents as per the list annexed as Exh-A to the above Notice of Motion. The said documents have been lost and misplaced and despite due diligent search the same are not traceable with the plaintiff. The existence of the said documents are never disputed or denied by the defendants. The original even documents are in possession of the plaintiff at the time of filing of the above suit.
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> 8. I further say that the plaintiff has exhausted all sources and means in search of the said loan documents including search of their documentation cell, recovery cell and legal sanction and inquiring from the previous Advocate concern with the above matter. However, despite diligent search and inquiries made about the original of the said loan documents the same could not be found and

they are not in possession of the plaintiff. The plaintiff is in possession of photocopy of the said documents. Xerox copy of the said documents produced along with list are true copy of the original documents taken out by the mechanical process of photocopy.

9. In the circumstances, the plaintiff submit that leave be granted to the applicants to adduce secondary evidence of the said lost loan documents by certified true copy of the said documents. Irreparable harm, loss and injury will be caused to the plaintiff if the reliefs as prayed for are not granted. Whereas no such harm loss or prejudice will be caused to the defendants, if the plaintiff is permitted to adduce secondary evidence by producing certified true copy of the said original documents under Section 65 of the Indian Evidence Act. The balance of convenience is in favour of the plaintiff for grant of ad-interim and interim reliefs as

prayed for".

3. Affidavit-in-reply is filed by defendant 1 opposing the grant of prayers made in the motion.

4. I have heard the learned counsel for the parties. The learned counsel for the defendants has strenuously opposed the prayers made by the plaintiff.

5. In the written statement it is admitted that defendant 1 took loan from the plaintiff. In paragraph 5 of the written statement it is admitted that defendants 2 and 3 stood as guarantors in the year 1982 and defendants 4, 5 & 6 stood as guarantors on 28/5/85. Execution of documents is not denied.

6. In the circumstances, the plaintiffs are permitted to adduce secondary evidence of the documents as per the list annexed as Exh.-A.

7. Motion is disposed of.

8. Let the suit come on board after two weeks, i.e. on 12/10/2007.

JUDGE